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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,228	05/31/2001	Fred R. Ziegler	74120-301403	8091

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EXAMINER	
PWU, JEFFREY C	

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/870,228	ZIEGLER ET AL.	
	Examiner	Art Unit	
	Jeffrey C. Pwu	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *13-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *13-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 January 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 13 and 15-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

For a claim to be statutory under 35 USC 101 the following two conditions must be met:

1) In the claim, the practical application of an algorithm or idea result in a useful, concrete, tangible result, AND

2) The claim provides a limitation in the technological art that enables a useful, concrete, tangible result.

As to the technology requirement, note MPEP Section iV 2(b). Also note In Re Waldbaum, 173USPQ 430 (CCPA 1972) which teaches "useful arts" is synonymous with "technological arts". In re Musgrave, 167USPQ 280 (CCPA1970), In re Johnston, 183USPQ 172 (CCPA 1974), and In re Toma, 197USPQ 852 (CCPA 1978), all teach a technological requirements.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al. (U.S. 6,282,192) in view of Gross et al. (U.S. 6,533, 515)

Murphy et al disclose a method of detecting network failures (29) in a Voice over IP (VOIP) network (20), the method comprising:

producing a failure rate based on disconnect cause codes of VoIP call usage records associated with VoIP call traffic handled by a particular VoIP network element for a given time interval; (col.8, line 44; "Every incoming call to the gateway 108 is identified by an Internet Protocol Address and Universal Datagram Protocol Port (IP/UDP) pair. When a new incoming call comes into gateway 108, the congestion detector 126 first determines if there is any previous congestion associated with the IP destination address associated with the new incoming call. The congestion detector 126 references a probing history table 125 to determine if there is currently a congestion problem associated with that IP address endpoint")

determining if the failure rate exceeds a defined threshold; and (col.8, line 54-col.9, line 16)

However, Murphy et al fail to teach generating an alarm if the failure rate information exceeds a defined threshold.

Gross, however, discloses a system for managing diagnostic and performance information which includes setting up diagnostic control message than when a parameter threshold is reached, an alert will be generated via an alarm or paging device

to a network professional/administrator (col.1, lines 45-65, col.7, lines 50-51, col.8, lines 1-20 and col.16, lines 65-67).

It would have been obvious to a person having ordinary skill in the art at the time of the invention was made to incorporate generating an alert upon reaching a defined thtreshold, as taught by Gross into Murphy, in order to better control VoIP calls by providing real-time information about the quality of the calls or any problems that may be occurring (col.1, lines 39-42 of Gross)

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 14 is rejected under 35 U.S.C. 102(e) as being unpatentable over Gross et al (U.S. 6,533,515).

Gross et al teach a method of identifying network failure in a Voice over IP (VoIP) network comprising:

Generating alarms from VoIP call records (Gross – col.5, lines 58-67 – col. 6, lines 1-19, col. 7 lines 50-51 – col.8, lines 1-20, col.11, lines 39-51 – Reports are

generated from past call records to indicate any problems or quality issues in the VoIP network)

Response to Arguments

7. Applicant's arguments, with respect to claim 14, have been fully considered but they are not persuasive. Claims 13 and 15-27 have been considered but are moot in view of the new ground(s) of rejection.

With respect to claim 14,

Applicant argues that Gross fails to teach "generating alarms from VoIP call usage records".

However, applicant admitted that Gross discloses "providing reports" (col.7, line 50 – col.8, line 12) and generating "alarms" (col.7, lines 14-20), and the creation of Diagnostic Messages". Therefore, the alarm is being generated based on the reports via the Diagnostic Messages (see also abstract, 108, and response manager 406).

In response to applicant's argument that the references fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., Gross disclosure does not explain "how or why reports would be produced (such as what criteria are used for report production)" are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, applicant only calls for: **"generating**

alarms from VoIP call usage records". The claimed limitation does not appear to show specific steps of generating the alarms from VoIP call usage record.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey C. Pwu whose telephone number is 571-272-6798. The examiner can normally be reached on 7:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May. 30, 05

JEFFREY PWU
PRIMARY EXAMINER